

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
CIVIL ACTION - LAW**

AAMCO TRANSMISSIONS, INC.	:	
Plaintiff,	:	
v.	:	No. 11-cv-6882
ROBERT SAYSANA	:	
and	:	
FIRM INVESTMENTS, LLC	:	
Defendants.	:	

AFFIDAVIT OF BRIAN O'DONNELL

I, Brian O'Donnell, an adult individual, being duly sworn, do hereby state as follows:

1. I am Senior Vice President of Operations for AAMCO Transmissions, Inc. ("ATI").
2. I am familiar with the history of Defendants Robert Saysana ("Saysana") and Firm Investments, LLC ("FI") as franchisees of ATI.
3. Since at least 1963, ATI has continually used the name "AAMCO" as its trade name, trademark and service mark in connection with the operation of a network of transmission repair centers.
4. ATI is the exclusive owner of its marks and maintains current registrations of the marks with the United States Patent and Trademark office.
5. ATI is engaged in interstate commerce in, inter alia, the business of franchising or licensing others to use the mark and name "AAMCO" in the operation of transmission and general automotive repair centers throughout the United States and Canada.
6. There are approximately 800 AAMCO locations licensed or franchised by ATI to operate automotive repair centers under the "AAMCO" trade name and trademark.
7. The "AAMCO" trade name and trademark have become universally associated with the repair of motor vehicle transmissions and the operation of transmission and general automotive repair centers.

8. ATI owns common-law trade name and trademark rights in the name "AAMCO" and other associated marks.

9. By virtue of the long use and promotion, and the resulting fine public reputation of the trade name "AAMCO", there exists a secondary meaning in the name "AAMCO".

10. Large sums of money have been spent in advertising and promoting the services sold under ATI's trade name and trademarks, and today ATI has a substantial business and a long established goodwill associated with the name and the above marks in connection with the services provided under its trade name and trademarks.

11. ATI has a vital interest in protecting its trade name and trademarks and the preservation and protection thereof are essential to the maintenance of ATI's quality transmission and general automotive repair centers and the goodwill and reputation associated therewith.

12. To supervise and control use of its trade name and trademarks, ATI has established standards and policies governing the quality of service to be provided to the public and has established procedures calling for the inspection of franchisees' centers to determine that the standards and policies are being followed.

13. On or about February 28, 2007, ATI and Defendant Saysana entered into a franchise agreement, pursuant to which Saysana was authorized to use the name and mark "AAMCO" in connection with the operation of an AAMCO Transmission Center located at 18204 Bothell-Everett Highway, Suite B & C of Building B, Bothell, WA 98011 (the "Center"). A true and correct copy of the said franchise agreement (the "Franchise Agreement") is attached hereto at Ex. "A."

14. On or about March 24, 2008, the parties executed an amendment to the Franchise Agreement whereby Defendant FI was added as a franchisee under the Franchise Agreement. See Amendment to Franchise Agreement at Exhibit "A".

15. As part of the franchising process, Defendants were provided access to ATI's proprietary system of doing business, including its trade secrets.

16. Defendant Saysana attended and completed ATI's intensive owner's training class wherein Defendants were given in depth instruction on how to operate an AAMCO Transmission Center.

17. As such, Defendants have been schooled in ATI's trade secrets and proprietary business procedures.

18. Defendants have additionally been given access to, and benefited from, ATI's technical assistance hot line, periodicals, technical bulletins, and special ATI programs.

19. In a letter dated August 10, 2011, ATI notified Defendants that they were in breach of the Franchise Agreement for, among other things, failure to pay sums due and owing to ATI and to the Seattle/Tacoma, WA AAMCO Dealers Advertising Pool. A true and correct copy of the said letter is attached hereto at Ex. "B".

20. In response, Defendants failed and refused to cure their payment failures with respect to the Franchise Agreement.

21. In a letter dated September 15, 2011, after giving prior written notice and an opportunity to cure, ATI terminated the Franchise Agreement for failure to pay monies due and owing and demanded that Defendants comply with their post termination obligations under the Franchise Agreement. A true and correct copy of the said letter is attached hereto at Ex. "C".

22. Despite the termination of their franchise and of any authority to continue in the transmission and general automotive repair business under the AAMCO name, Defendants have refused to take the actions required by Sections 19.2, 15 or 20 of the Franchise Agreement.

23. Defendants have refused to remove the AAMCO name and trademark from the Center and cease all use of ATI's systems and AAMCO merchandising materials there and, instead, have continued to operate a competing transmission and general automotive repair

business at the former Center location under the name and style "AAMCO Transmissions", to hold themselves out to be an authorized ATI franchisee, and to use the AAMCO trade name and trademark, without any license or right whatsoever.

24. Defendants continue to refuse to turn over to ATI all of the AAMCO advertised telephone numbers associated with the Center, including the number (425) 485-3723 which appears on an internet listing for "AAMCO".

25. ATI is the exclusive owner of the AAMCO marks and Defendants' use of these marks is permitted only through the Franchise Agreement.

26. The Center location has operated under the AAMCO trademark since 2008.

27. Customers have come to know the former Center location as "AAMCO" and defendants continue to display AAMCO signage and materials at the Center location.

28. The Center location continues to be advertised as "AAMCO."

29. Defendants have been trained in ATI's proprietary systems and have been provided its confidential information and material, trade secrets, and other unique methods, procedures and techniques developed by ATI.

30. Defendants have retained, and are using ATI's proprietary software, manuals and other materials containing ATI's marks, proprietary knowledge and trade secrets.

31. Defendants are using their knowledge of ATI, its unique system of doing business and other confidential information in their competing business.

32. Defendants continue to operate an automotive repair business using AAMCO signage, materials, advertised telephone number, trade secrets and proprietary information.

33. Defendants are no longer burdened with paying franchise fees or honoring AAMCO warranties.

34. ATI has several other AAMCO Transmission Centers in the Seattle metro market area.

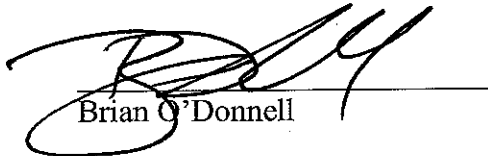
35. If Defendants are permitted to flagrantly violate the non-compete covenant without penalty or recourse, ATI will not be able to police its own mark.

36. Defendants' continued operation of a competing business from the location^{at} issue undeniably creates an unfair competitive advantage to Defendants.

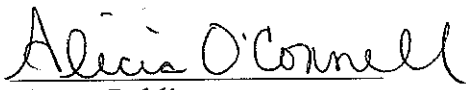
37. ATI's efforts to set up a new AAMCO Transmission Center in the Seattle metro area will be unfairly stymied as potential franchisees will not likely be willing to pay franchise fees to operate essentially the same business~~as~~ as the Defendants, who are already operating from ^{an} AAMCO locations~~with~~ with AAMCO advertising.

38. Defendants continue to display ATI's AAMCO mark on signage and provide "AAMCO" repair orders to their customers.

39. Defendants are misleading customers into believing that Defendants' competing business is a bona fide AAMCO Transmission Center when it is not.


Brian O'Donnell

Sworn to and subscribed before me
this 14th day of November, 2011.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Alicia O'Connell, Notary Public
Horsham Twp., Montgomery County
My Commission Expires Oct. 4, 2012
Member, Pennsylvania Association of Notaries